98TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 98-528

SMALL BUSINESS BREAKOUTS

NOVEMBER 10, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MITCHELL, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 4209]

The Committee on Small Business, to whom was referred the bill (H.R. 4209) to amend section 15 of the Small Business Act, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 3, line 2, strike out "and" and insert, in lieu thereof, the following:

> (D) review the systems that account for the access to and ownership of all manufacturing data within that procurement center to assure such systems provide the maximum availability to small business concerns; and

Page 3, line 3, strike out "(D)" and insert, in lieu thereof, "(E)".

THE PURPOSE OF THE BILL

The purpose of the bill is to provide a Small Business Administration break-out procurement center representative at each major Federal procurement center, with sufficient staff resources, to monitor and recommend certain procurement practices needed to effect cost savings through increased competition.

INTRODUCTION AND BACKGROUND

The biil, H.R. 4209, was reported, with amendment, from the Subcommittee on General Oversight and the Economy by a unanimous vote (11–0) of those Members present at a subcommittee meeting held on October 27, 1983.

H.R. 4209 reflects Subcommittee consideration of H.R. 3784. Both measures were introduced by Representative Boxer and cosponsored by Representative Berkley Bedell.

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The Subcommittee on General Oversight and the Economy held hearings on H.R. 3784 and other procurement-related measures on October 5 and 6, 1983 in Washington, D.C. and October 12, in Jamestown, N.C. Throughout its lengthy investigation, the Subcommittee also received and carefully analyzed numerous reports, statistical data, and other investigative materials supplied by a variety of both public and private sector sources.

The full Committee met on November 3, 1983 and by a vote of 37–1 ordered the measure favorably reported, as amended by its Subcommittee.

The Need for the Legislation

To implement the Small Business Act, as amended, the Small Business Administration assigns procurement center representatives to 52 Federal acquisition centers. Their major function is to maximize potential opportunities for small businesses to obtain government procurement contracts. In late 1979, SBA initiated a pilot program to compliment this effort by adding a "breakout procurement center representative" (BO–PCR) to four Air Logistic Centers (ALC)—Oklahoma City, San Antonio, Warner Robins and Ogden. These breakout PCR's were to review sole-source parts purchases from the original equipment manufacturers by the ALC's and recommend, when appropriate, competitive procurements or direct purchase from the actual manufacturers of these items.

It was clearly demonstrated to your Committee that the BO–PCR's perform an extremely valuable, and tremendously cost-effective function. One BO–PCR estimated to your Committee that he saved the Government 400 times his salary through his activities. A General Accounting Office official, testifying before the House Government Operations Committee on April 19, 1983, said:

> Several recent reviews and audits performed by GAO, the Naval Audit Service, and the Defense Inspector General, have shown that if the Services are successful in breaking out high dollar value spare parts, savings can be substantial.

BO–PCRs earn these savings by evaluating the Air Force purchases on a sole source basis and suggesting that, in appropriate cases, they be purchased competitively. For example, your Committee was told of a rubber door gasket that had been purchased on a sole source basis for $94.02 apiece. Competitively, bid the same gasket cost $5.69. Total savings on this procurement were $21,000. An I-bolt suggested for break-out by a BO–PCR was competitively purchased for $13.49 after it had been sole-source purchased for $328. On an order for 44 I-bolts the Government saved $13,000.

Another part, bent sheet metal with three holes drilled into it, was sole-source purchased from the original equipment manufacturer at $153 apiece. After the BO–PCR suggested competition on the part, 15 bids were received and a low bid of $5.87 was selected. The total savings on the buy was $27,000.

In all, a BO–PCR showed your Subcommittee a number of parts purchased competitively by Tinker Air Force Base in Oklahoma City for $96.00. Prior to being purchased competitively, the same parts cost the Government $2,300 when they were bought on a sole source basis from the original equipment manufacturers. Collectively, considering the various quantities in which the parts were purchased, the Govern-

ment saved $183,000 on the competitive purchase of these parts. In the second quarter of 1983, the BO–PCR at Tinker Air Force Base told your Committee that his office was responsible for saving the government $3,905,000 by breaking out competitive purchases from previously sole sourced items.

Despite their effectiveness, the BO–PCRs are working under several constraints. First, there are only four BO–PCRs in the entire country all of which are located at major Air Force bases. Those four BO–PCRs are not provided with an adequate number of technical assistance personnel. In addition, your Committee was informed that the BO–PCRs are receiving varying levels of cooperation from base commanders and their management teams.

The General Accounting Office, in an August 2, 1982 report to Representative Addabbo, supported these contentions:

> The SBA personnel at all locations involved in breakout activities told us that limited staff prevents them from reviewing many procurements with breakout potential. To verify this, we asked the PCR at the Ogden ALC to record all the procurements which he handled during one week. Four hundred and forty-four procurement requests were recorded for the week. The PCR identified 132 of these procurements for potential breakout, but could review only 17 percent (22 of the 132) for breakout. The PCR was firmly convinced that assigning additional staff to breakout efforts would result in a greater number of breakouts and a larger dollar saving.
>
> * * * we believe that limited time and staff prevent SBA personnel from pursuing many procurements with breakout potential * * * we recommend that the Administrator of the Small Business Administration assign additional resources to the breakout efforts at ALCs and consider assigning breakout PCR specialists to other Defense procurement centers.

A concern was raised before your Committee by small business concerns that value engineering change proposals (VECP) were not fully utilized by Federal agencies. A VECP is a modification to a contract specification that can have the effect of saving the government money without compromising legitimate procurement objectives. Witnesses believed that the current policy of not accepting VECPs from potential contractors other than the original manufacturer is costing the government potential savings and is limiting small business involvement.

Finally, there was also considerable concern expressed to your Committee that the inadequate storage of and access to technical data by procurement centers was inhibiting the competitive procurement of many replacement part items. An amendment was offered by Subcommittee Chairman Bedell, and unanimously accepted by your Oversight Subcommittee, to give the BO–PCRs the authority to review the storage of technical data and its availability to small business concerns.

What the Bill Would Do

1. Assignment of breakout procurement center representatives

The bill, H.R. 4209, would require the SBA Administrator to assign to each major procurement center a breakout procurement center representative (BO–PCR) to be responsible for implementing and exe-

cuting functions that seeks to increase the competitive procurement of spare parts and maximize opportunities for small business concerns to obtain contracts to supply these parts. The intent of the Committee is clear in that these BO–PCRs are to be assigned in addition to the traditional SBA procurement center representatives, and that BO–PCRs rather than perform the functions of the traditional PCR's, will work side by side with them.

A major procurement center is defined as a center with a contract volume in excess of $150,000,000, in spare parts, in the preceding fiscal year.

2. RESPONSIBILITIES OF BO–PCRS

The special functions assigned to the BO–PCRs in H.R. 4209 are designed to assure that the BO–PCRs will have the necessary legislative mandate to do their job effectively. The bill would give the BO–PCRs the authority to review procurement methods to assure that the Procurement Method Codes (PMC) do not restrict competition unfairly and, thereby, eliminate small business concerns from the procurement of spare parts. When appropriate, the BO–PCRs are to do the necessary evaluations and studies needed to change competition-restricting codes.

BO–PCRs shall also review procurement requirements that are proposed or projected to be issued under consolidated solicitations. Should the BO–PCR determine that these solicitations limit the opportunity for small business concerns to compete for the solicitation as prime contractors, the BO–PCR can recommend reducing the number of requirements in the solicitations to promote the opportunity for small businesses to submit offers.

The bill would also require that the BO–PCRs review and conduct, when appropriate, analyses of value engineering change proposals. A value engineering change proposal is an offer to supply a part or equipment that is modified from the original procurement specifications. The BO–PCR will review the proposals to determine whether, if it is adopted, it will result in lower costs to the government without impeding legitimate acquisition objectives. In addition, the bill would permit value engineering change proposals to be submitted by any potential contractor; it does not limit the right to submit such proposals to any source.

This proposed legislation would also give the BO–PCRs the authority to review the storage of and access to technical data at procurement centers. The BO–PCRs are to evaluate whether technical data is available and in usable condition to facilitate the needs of small business concerns wishing to submit offers on procurement solicitations.

The BO–PCRs, in consultation with the SBA Administrator, would be required to suggest changes in procurement center policies and procedures directly to the head of that procurement center, and to make suggestions on storage of and access to technical data. The BO–PCRs, also in consultation with the SBA Administrator, shall recommend to the head of the appropriate purchasing activity changes in procurement method codes necessary to increase competition in spare parts procurements and the desirability of adopting value engineering change proposals reviewed by the BO–PCRs.

It is important to note that the bill does not require that the BO–PCR make recommendations only to the head of the procurement center where the BO–PCR is located. The BO–PCR may, whenever necessary, make recommendations to the head of the appropriate purchasing activity with authority to act on the BO–PCR's recommendations.

The legislation requires that the head of the purchasing activity who receives a recommendation from a BO–PCR shall, within 30 days after receipt of the recommendation, issue a written decision either accepting or declining the recommendation.

3. TECHNICAL ADVISORS TO ASSIST BO–PCRS

H.R. 4209 would require that the Director of Small and Disadvantaged Business Utilization of each agency that has a major procurement center, assign and co-locate four technical advisers to assist the BO–PCRs perform the functions required of their office. These technical advisers are to be full-time employees of the procuring activity and are to be well qualified, technically trained and familiar with the supplies, services and spare parts purchased by the procurement center. At least one of the four technical advisers assigned to assist each BO–PCR must be an accredited engineer.

4. REPORT OF THE COMPTROLLER GENERAL

H.R. 4209 would require that the Comptroller General annually prepare and submit a report to the Committees on Small Business of both the House and Senate covering the cost savings achieved during the year as a result of the efforts of the BO–PCRs, an evaluation of the increased competition resulting from the efforts of the BO–PCRs any any other information the Comptroller deems appropriate.

Conclusion

Your Committee believes that H.R. 4209 is an inexpensive, common sense response to the problem of restricted competition on spare parts purchased that unnecessarily costs the government many millions, if not billions, of dollars every year.

The bill would authorize the placement of a breakout procurement center representative with adequate technical advisers at each major spare parts procurement center. These BO–PCRs have clearly demonstrated to your Committee their ability to save the government many times their salaries through their activities.

The national welfare and security will benefit from the increased competition in spare parts procurement and small business concerns will benefit from the increased opportunities to submit bids on government procurement contracts.

Matters Required To Be Discussed Under House Rules

In compliance with clause 2(l) (2) of rule XI of the House of Representatives, the following statement is made relative to the vote on the motion to report H.R. 4209:

A majority of the committee voted in person and was actually present and the motion was approved by a recorded vote of 37 ayes and one nay.

In compliance with clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A), relating to oversight findings, the committee finds, in keeping with clause 2(b)(1) of rule X, that this legislation is in full compliance with the provision of this rule of the House which states:

> In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee. * * *

With regard to subdivision (B), relating to the statement required by section 308(a) of the Congressional Budget Act of 1974, the following statement is made relative to the legislation:

> Section 3(a)(2) of the Congressional Budget Act defines the term "tax expenditures" as those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction, from gross income or which provides a special credit, a preferential rate of tax, or a deferral of tax liability.

None of the provisions of H.R. 4209 deals with taxation and thus, in your committee's opinion, this bill does not provide new or increased tax expenditures.

Section 3(a)(2) of the Congressional Budget Act defines the term "budget authority" as authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds.

Under this definition, it is the final action of Congress that authorizes an agency to enter into obligations which constitutes new budget authority. In those cases which entail (1) an authorization for an agency to undertake a program; (2) an authorization for appropriation of funds to permit that agency to enter into obligations; and (3) an actual appropriation of such funds, it would be only the final action of Congress in appropriating funds which constitutes the budget authority.

None of the provisions of H.R. 4209 appropriates funds and thus, in your committee's opinion, the bill does not provide new budget authority. Accordingly, no comparsion of budget authority, outlays or tax expenditures or 5-year projections have been made.

With regard to subdivisions (C) and (D), the cost estimate of the Director of the Congressional Budget Office relative to H.R. 4209 was requested but not received.

No oversight findings or recommendations have been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 4209.

In compliance with clause 2(l)(4) the committee concludes that the provisions this legislation in and of themselves will have no inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7, rule XIII of the House of Representatives, the committee makes the following statement:

The costs attributable to this bill for the current fiscal year and for fiscal years 1985–89 are expected to be more than offset by the benefits to be derived from an effective break-out program which will increase the competitive procurement of many items which are now purchased under expensive sole-source procurement methods. Empirical data compiled by the General Accounting Office for the few procurement centers where break-out PCR's are now located support this assumption. Accordingly, your Committee believes there are negative costs associated with the bill.

No cost estimate was submitted by any Government agency on H.R. 4209 to your committee.

In your committee's opinion, the above statements fully comply with the Rules of the House of Representatives.

Section-by-Section Analysis

Section 1 would amend Section 15 of the Small Business Act (15 U.S.C. 644) by requiring the SBA Administrator to assign to each major procurement center a break-out procurement center representative (BO–PCR). These BO–PCRs shall be in addition to the regular PCR referred to in subsection (k) (6) of Section 15 of the Small Business Act.

The break-out procurement center representative is given the following responsibilities:

(A) Review procurement method codes to ensure that the capabilities of small business concerns are fully considered, and to conduct independent studies and evaluations necessary to change restrictive codes to codes that will encourage increased competition.

(B) Review procurement requirements proposed or projected to be purchased under consolidated solicitations which limit the opportunities of small business concerns to compete as prime contractors and to recommend reducing the number of those requirements in consolidated solicitations to promote the maximum opportunity for small businesses to submit bids.

(C) Review and, when appropriate, conduct a value analysis of engineering change proposals received from any source to determine whether a proposal will save the government money while achieving the acquisition objective.

(D) Review the system of storage and access to technical data within a procurement center, and to recommend changes in the system to encourage competition and small business bids on spare parts procurements.

(E) In consultation with the SBA Administrator recommend to the head of the appropriate purchasing activity a) changes in procurement policies and procedures; b) changes in procurement method codes; and c) the desirability of value engineering change proposal. The head of the purchasing activity that receives recommendations from a break-out procurement center representative must, within 30 days, issue a written decision accepting or declining the recommendation.

This section of the bill also requires the Director of Small and Disadvantaged Business Utilization of each agency with a major procurement center to assign and co-locate, four small business technical advisors that are full-time employees of the procuring activity and are well-qualified, technically trained and familiar with the supplies, services and spare parts purchased by the activity whose sole duty is to assist each break-out procurement center representative. At least one of these technical advisers must be an accredited engineer.

A major procurement center is one that processed a contract volume of not less than $150,000,000 in spare parts in the preceding fiscal year.

Section 2 would amend Section 15(h) of the Small Business Act to require the Comptroller General to prepare and submit annual reports to the Committees on Small Business of the House and Senate on the cost savings achieved during the year by the efforts of the break-out procurement center representatives, an evaluation of the increased competition resulting from their efforts and any other information the Comptroller deems appropriate.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 15 of the Small Business Act

Sec. 15. (a) * * *

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(h) (*1*) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. The Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.

(2) The Comptroller General shall annually prepare and submit to the Committees on Small Business of the House of Representatives and of the Senate a report setting forth—

(A) the cost savings achieved during the year covered by such report through the efforts of breakout procurement center representatives;

(B) an evaluation of the extent of increased competition resulting from such efforts; and

(C) such other information as the Comptroller may deem appropriate.

* * * * * * *

(l)(1) The Administration shall assign to each major procurement center a breakout procurement center representative, who shall, with respect to such center, be responsible for implementing and executing the functions and duties described under paragraph (2). A representative appointed to a procurement center under the preceding sentence shall be in addition to the representative referred to in subsection (k)(6).

(2) The breakout procurement center representative referred to in paragraph (1) shall—

(A) review procurement method codes to ensure that small business capabilities are fully considered, and conduct independent studies and evaluations necessary to change the use of restrictive codings in order to encourage increased competition;

(B) review procurement requirements proposed or projected to be purchased under consolidated solicitations which limit the opportunity for small business to compete as prime contractors and to recommend reducing the number of these requirements to be contained in each such solicitation in order to promote the maximum practicable opportunity for small business concerns to submit offers in response to such solicitations;

(C) review and, when appropriate, conduct a value analysis of an engineering change proposal received from any source to determine whether such proposal, if adopted, will result in lower costs to the Government without substantially impeding legitimate acquisition objectives;

(D) review the systems that account for the access to and ownership of all manufacturing data within that procurement center to assure such systems provide the maximum availability to small business concerns; and

(E) in consultation with the Administrator—

(i) suggest to the head of the procurement center changes in procurement policies and procedures for such center; and

(ii) recommend to the head of the appropriate purchasing activity changes to procurement method codes based on findings under subparagraph (A) and desirability of value engineering change proposals as determined pursuant to subparagraph (C). The head of such activity shall, within thirty days after the receipt of such a recommendation, issue a written decision either accepting or declining the recommendation.

(3)(A) The Director of Small and Disadvantaged Business Utilization of each agency having a major procurement center shall assign, and colocate, four small business technical advisers to each major procurement center.

(B) Technical advisers assigned under this paragraph shall be—

(i) full time employees of the procuring activity; and

(ii) well qualified, technically trained, and familiar with the supplies, services, and spare parts purchased at the activity;

Provided, That at least one such adviser shall be an accredited engineer.

(C) The sole duty of a technical adviser under this paragraph shall be to assist the breakout procurement center representative for the center to which such adviser is assigned in carrying out the functions and duties referred to in paragraph (2).

(4) For purposes of this subsection a procurement center shall, with respect to any fiscal year, be considered to be a major procurement center if such center processed a contract volume of not less than $150,000,000 in spare parts in the preceding fiscal year, as determined under regulations prescribed by the Administrator.

[(l)] (*m*) (1) The President shall, not later than October 1, 1979, transmit to the Select Committee on Small Business and the Committee on Armed Services of the Senate and the Committee on Small Business and the Committee on Armed Services of the House of Representatives a report on the labor surplus area procurement program under this section and the manpower policy described in subparagraph (D). Such report, together with recommendations, shall include, but not be limited to—

(A) an analysis of the effectiveness of such labor surplus area procurement program, including its effectiveness in creating jobs in the areas of high unemployment and the method by which labor markets are classified and designated as labor surplus areas;

(B) its potential benefits to Federal, State and local governments, including tax benefits, reductions in Federal payments to labor surplus areas, and reductions in State unemployment costs where such information is available;

(C) its potential costs, including its impact on the efficient utilization of Federal resources, its effect on the local economy of non-labor surplus areas, its impact on small business concerns not in labor surplus areas to the extent such information is available, and its impact on contract costs to the Federal Government; and

(D) with respect to the implementation by the Department of Defense of Defense Manpower Policy Number 4A (32A CFR Chapter 1) or any successor policy, in addition to the matters required by subparagraphs (A), (B), and (C), information concerning the impact on such matters of the expenditure of any funds which were available for procurement and which were not obligated for expenditure on September 30, 1977.

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